UNITED SEA 2:09-04/09 Page 1 of 11 DISTRICT OF NEW JERSEY

CHUCKS LLC d/b/a REAL BROTHER COLLECTION, An Indiana Company

Case No. 09 CIV 3858

Plaintiff,

NOTICE OF MOTION

-against-

ART ZULU, INC.,
A New Jersey Corporation

Defendant.

TO: Dubal Law Offices, LLC 15 Corporate Plae South, Suite 319 Piscataway, NJ 08854

PLEASE TAKE NOTICE that upon the annexed Certification of Lora Flaugh and the exhibits annexed thereto, a motion will be made to this Court before the Honorable Claire C. Cecchi at the United States Courthouse for the District of New Jersey located at 50 Walnut Street, Room 2064, Newark, New Jersey 07102 pursuant to Federal Rule of Civil Procedure 12(b)(6) for an Order dismissing plaintiff's complaint for failure to state a cause of action, along with such other and further relief this Court deems just and proper.

Dated: New York, New York December 1, 2009

HANTMAN & ASSOCIATES

Robert J. Hantman (3947) Attorneys for Defendant 1515 Broadway, 11th Floor New York, NY 10039 (212) 684-3933 Case 2:09-cv-03858-WHW-CCC Document 5 Filed 12/04/09 Page 2 of 11

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHUCKS LLC, d/b/a REAL BROTHER COLLECTION,
An Indiana Company Case No. 09 CV 3858 (CCC)

Plaintiff, CERTIFICATION OF
LORA FLAUGH

ART ZULU, INC.

A New Jersey Corporation

Defendant.

Lora Flaugh, certifies as follows:

- 1. I am the President of the defendant Art Zulu, and as such I am personally familiar with the facts stated herein.
- 2. I submit this Certification in support of the motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiff's complaint for failure to state a claim for which relief may be granted.
- 3. Annexed hereto as Exhibit A, is the printout from Art Zulu's website which sets forth that the agency does design, branding, and marketing. Notably it does not manufacture, produce or supply clothing as alleged in plaintiff's complaint.
- 4. Annexed hereto as Exhibit B is the invoice submitted by Art Zulu for the design work it provided to plaintiff. The invoice was accepted and paid by plaintiff without objection. Notably there is no indication of Art Zulu being responsible for any manufacture, production or supplying of clothing.
- 5. Therefore, as set forth in the accompanying memorandum of law, plaintiff's complaint should be dismissed in its entirety.
- 6. The foregoing statements are true to the best of my knowledge, I am aware that any

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statement made which is willfully false may subject me to punishment.

Dated:

New York, New York

December 1, 2009

LORA FLAUGH



WORK**COMPANY**NEWS**CONTACT**

Art Zulu is a full service design, branking and marketing agency.

We specialize in helping brands reach their target market through innovative designs and new media marketing.

We have experience in both boutkjue aixl national brand building in both fashion collections and consumer goods.

We approach every project with the right balance of artistry and business.









12/4/2009 http://artzulu.com/



WORKCOMPANYNEWSCONTACT

ART ZULU

Art Zulu is a full service design, branding, and markuling agency. We specialize in helping brands reach their target market through innovative designs and new media morketing. We have experience in both boufique and national brand building in both fashion collections and consumer goods. We approach every project with the right balance of artistry and business.

LORA FLAUGH Managing Director and Creative Director

Lora Flaugh is a designer, strategist, and producer of brands for both consumer goods and fashion collections. She has extensive experience concepting, developing, and faunching brands to multiple market sectors.

Leading Art Zulu, which she launched in 1999, means shaping the agency's overarching vision as well as guiding teams of creatives including fashion designers, copywriters and interactive and graphic designers, working across disciplines to position as the agency produces designs. Her focus is on reshaping and producing new brands that can become in-store



12/4/2009

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ART ZULU INC.

Invoice

1333 Broadway Suite #301 New York, NY 10018 212-868-0377/Fax 212-868-0386

DATE	INVOICE#
11/11/2005	73186

BILL TO	
Chuks Corp d/b/a Real Brother Collection Benstone ND Chukwuocha P.O. Box 502488 Indianapolis, IN 46250	

	TERMS	DUE DATE	
	As Below	11/11/2005	
DESCRIPTION		AMOUNT	
Design Project for Real Brother Collection - 18-22 items as follows: 10 T-shirts 2 Hats/ 2 Visors 2 Athletic Jacket and Pant Sets 3 Jeans 3 Sweatshirts Included in the Design Project are: 1. Fashion Design sketch of each style 2. Selection of Fabric and denim washes 3. Original Graphic Art for each style as needed 4. Original Graphic Art/Layout with Pantone colors Also included for Project: Web Site construction (\$5,000.00) Press Kit Layout		27,000.00	
Payment Terms: \$12,500 Due by Nov 30, 2005 - at start of project (includes \$2500 for \$7,500 - due on or before Dec 9, 2005 (interim design payment) \$5,000 - due by Dec 14, 2005 on approval of design concepts (includes \$2,000.00 due on or before Dec 21, 2005 on presentation of final projectech packs Wire funds to: JP Morgan/Chase Manhattan Bank - ABA: 021000021 020503662865/ Art Zulu, Inc.	website) oct and		
	Total:	\$27,000.00	
All Artwork, Creative Work, and Intellectual Concepts remain the property of Art Zulu until this invoice is paid in full. Client is not permitted to use any work involved in the project prior to payment of this invoice in full.	Payments/Credits	\$0.00	
	Balance Due	\$27,000.00	

Siddharth G. Dubal, Esq. (SD-2409) Dubal Law Offices, LLC 15 Corporate Place South, Suite 319

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U.S. DISTRICT COURT

Piscataway, NJ 08854 Ph: (732) 465-0465 Fax: (732) 465-0464

Attorneys for Plaintiff Chuks LLC

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

CHUCKS LLC d/b/a REAL BROTHER COLLECTION,

An Indiana Company,

Plaintiff

٧.

Civil Action No.: 09-

} COMPLAINT AND
} DEMAND FOR JURY TRIAL

ART ZULU, INC.
A New Jersey Corporation:

Defendant.

Comes now Plaintiff, Chuks LLC d/b/a Real Brother Collection ("Plaintiff"), by counsel, Siddharth G. Dubal, and for its Complaint for Damages against Defendant, Art Zulu, Inc. ("Defendant"), states as follows:

I. NATURE OF ACTION

1. This is a civil action for damages against the Defendant in violation of the common law of New York.

II. PARTIES

1. Plaintiff is a for-profit corporation incorporated in the State of Indiana. Plaintiff maintains its offices at 7045 American Way, Suite C, Indianapolis, Indiana.

 Defendant is a for-profit foreign business corporation incorporated in the State of New Jersey.

II. JURISDICTION AND VENUE

- 3. The Court has jurisdiction over this cause of action because diversity of the parties exists pursuant to 28 U.S.C. 1332. The amount in controversy, exclusive of fees and costs, exceeds the jurisdictional amount of \$75,000.
- 4. Venue is proper pursuant to 28 U.S.C. § 1391 in that Defendant is incorporated in the State of New Jersey.

III. FACTUAL ALLEGATIONS

- 5. Plaintiff is in the business of distributing a unique clothing line to retailers both domestically and internationally.
- 6. Defendant is in the business of manufacturing and supplying clothing lines as well as marketing schemes to distributors.
- 7. On or about November 11, 2005, Plaintiff entered into an agreement with Defendant in which Defendant agreed to manufacture, produce, and supply Plaintiff with a unique clothing line. In addition, Defendant agreed to provide Plaintiff with a particular marketing scheme which included the design of a website.
- 8. Plaintiff paid Defendant the sum of \$27,000 in consideration for Defendant's performance pursuant to the agreement.
- Defendant breached the contract in that it supplied Plaintiff with clothing that was
 defective and contrary to the specifications agreed upon between the parties.

10. Plaintiff allowed Defendant an opportunity to cure the defect and fulfill

Defendant's obligations under the agreement. To date, however, Defendant has failed to cure the

defect and refused to do so.

VI. CAUSES OF ACTION

Count 1 - Breach of Contract

- 11. Plaintiff hereby incorporates the foregoing paragraphs one (1) through ten (10) of its Complaint as if fully set forth herein.
 - 12. Defendant breached the agreement entered into by the parties.
- 13. Plaintiff has suffered, and will continue to suffer, damages as a result of Defendant's breach.

<u>Count 2</u> – Tortious Interference

- 14. Plaintiff hereby incorporates the foregoing paragraphs one (1) through thirteen(13) of its Complaint as if fully set forth herein.
- 15. By virtue of its conduct, Defendant has intentionally and improperly interfered with contracts between Plaintiff and many of its customers. Defendant has intentionally and improperly interfered with the advantageous business and economic relations between Plaintiff and its customers, both existing and prospective.
- 16. Plaintiff has suffered, and will continue to suffer, damages as a direct and proximate result of Defendant's conduct.

Count 3 - Punitive Damages

. 17. Plaintiff hereby incorporates the foregoing paragraphs one (1) through sixteen (16) of its Complaint as if fully set forth herein.

- 18. Defendant acted intentionally, wantonly, recklessly, and with a total disregard for Plaintiff's rights.
- 19. As a direct and proximate result of Defendant's conduct, Plaintiff is entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court find in her favor and order the following relief:

- A. Order Defendant to pay Plaintiff compensatory damages;
- B. Order Defendant to pay Plaintiff consequential damages;
- C. Order Defendant to pay Plaintiff punitive damages;
- D. Order Defendant to pay Plaintiff treble damages;
- E. Order Defendant to pay Plaintiff its attorneys' fees, litigation expenses, and costs incurred as a result of bringing this action;
 - F. Order Defendant to pay Plaintiff pre- and post-judgment interest; and
- G. Order all other monetary and/or equitable relief that the Court deems just and proper in the premises.

DEMAND FOR JURY TRIAL

Plaintiff, Chuks LLC d/b/a Real Brother Collection, by counsel, respectfully requests a jury trial for all issues deemed so triable.

DUBAL LAW OFFICES, LLC

Attorneys for Plaintiff Chuks, LLC

Siddharth G. Dubal

Dated: July 22, 2009

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any action pending in any court or any pending arbitration or administrative proceeding.

DUBAL LAW OFFICES, LLC

Attorneys for Plaintiff Chuks, LLC

Siddharth G. Dubal

Dated: July 22, 2009

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